

SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS	
FILED	
JAN 15 2008	
CRIMINAL ACTION NUMBER	U.S. DISTRICT COURT
3:95-CR-264-P	By <u>SUC</u> Deputy

JOSE PAZ GARCIA,
Petitioner,

§

§

§

V.

§

§

UNITED STATES OF AMERICA,
Respondent.

§

CRIMINAL ACTION NUMBER U.S. DISTRICT COURT
3:95-CR-264-P By SUC
Deputy

JUDICIAL NOTICE TO SUPPORT
WRIT OF ERROR AUDITA QUERELA
FEDERAL RULES OF EVIDENCE
"RULE 201"

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Jose Paz Garcia (hereinafter "Petitioner"), a pro se litigant, and moves this Honorable United States District Court to take judicial notice of adjudicative facts on recharacterization that is not subject to reasonable dispute in that it is capable of accurate and ready determination that cannot be question under the Supreme Court opinion held in Castro v. United States, 540 U.S. 375, 157 L.Ed.2d 778, 124 S.Ct. 786 (2003).

I. INTRODUCTION

In support of the foregoing Motion, Petitioner will first of all inform this Honorable Said Court that he is unskilled and moreover is a layman at the profession of Law, and would therefore ask that this Honorable Said Court recognize the standards set forth by the Honorable United States Supreme Court in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and in doing so, not hold Petitioner herein to the rigids standards of a Professional Legal Litigator.

III. JURISDICTION

This Honorable Court has jurisdiction under Title 18 U.S.C. §3231.

III. ADJUDICATIVE FACTS

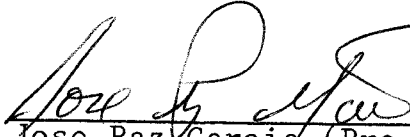
The Supreme Court in Castro v. United States, 540 U.S. 375, 157 L.Ed.2d 778, 124 S.Ct. 786 (2003) held that:

"Federal courts sometimes will ignore the legal label that a pro se litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category... They may do so in order to avoid an unnecessary dismissal... to avoid inappropriate stringent application [second or successive] of formal labeling requirements... or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis ... a district court may not recharacterize a pro se litigant an opportunity to contest the recharacterization, ... The 'lack of warning' prevents his making an informed judgment in respect to the latter just as it does in respect to the former. Indeed, an unwarned pro se litigant's failure to appeal a recharacterization simply underscores the practical importance of providing the warning." [Bracket added] (Cases Ommitted) (Emphasis Added).

Id. at 157 L.Ed.2d 786, 788.

Therefore, this Honorable Court **should not** recharacterize Petitioner's Writ of Audita Querela as a "§2255 or as a second or successive §2255" without giving Petitioner herein a Castro's warning giving Petitioner an opportunity to contest the recharacterization. Correspondingly, this Court is moved to take judicial notice of adjudicative recharacterization established in Castro. See, e.g., The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 S.Ct. 410, 57 L.Ed. 716 (1913) ("the party who brings a suit is master to decide what law he will rely upon.").

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jose Paz Garcia, hereby certify that I have forwarded a true and correct copy of the foregoing instrument by the method indicated to all counsel of record listed below on the 12th day of January, 2009.

(U.S. Certified First Class Mail)
#7007 2560 0000 2221 1111

Mark McBride
Asst. U.S. Attorney
U.S. Dept. of Justice
Northern District of Texas
U.S. Courthouse, Third Floor
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Dallas, Texas 75242



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